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**1992 Wis Eth Bd 28**  
LOCAL CODE - DISQUALIFICATION; LOCAL CODE - IMPROPER USE  
OF OFFICE

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A village engineer should not act in an official capacity with respect to the review of plans the engineer has prepared in a private capacity or submitted by developers with which the village engineer is associated.

OEB 92-28 (September 15, 1992)

Facts

[1] This opinion is based upon these understandings:

- a. You are the village attorney for a Wisconsin village.
- b. You indicate that the village engineer is nominated by the village president, confirmed by the village board, and serves at the pleasure of the village board.
- c. The village engineer is responsible for reviewing and approving plans presented by developers for subdivisions, apartment complexes, and other development in the village.
- d. The village engineer also represents some of the same developers, as the engineer for projects the village engineer is responsible for reviewing in the village engineer's official capacity.
- e. The village engineer also works on projects outside the village for the same developers that have projects within the village.

Questions

[2] The Ethics Board understands your questions to be:

1. What restrictions, if any, does the code of ethics for local government officials and employees impose on the village engineer's ability to review plans on which he or she has worked in his or her private capacity?
2. What restrictions, if any, does the code of ethics for local government officials and employees impose on a village engineer's ability to review plans presented by developers for whom the engineer works on other projects?

Discussion

[3] Section 19.59(1)(c), *Wisconsin Statutes*, provides:

**19.59(1)(c)...**[N]o local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

[4] A local public official is “associated” with an organization if that official “owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity” or if an individual is “an authorized representative or agency” of an organization. §19.42(2), *Wisconsin Statutes*.

[5] The village engineer about whom you ask appears subject to the code of ethics for local officials. The statute defines local public officials to include individuals who hold “[a]n appointive office or position of a local government which is filled by the governing body of the local government or the executive or administrative head of the local government and in which the incumbent serves at the pleasure of the appointing authority, except a clerical position, a position limited to the exercise of ministerial action or a position filled by an independent contractor.” §19.42(7w), (7x), *Wisconsin Statutes*. As described by you, the village engineer is appointed by the village board, on the recommendation of the village president, and serves at the pleasure of the appointing authority. The duties of the village engineer, as described by you, are not clerical or ministerial. Moreover, it does not appear that the village engineer is an independent contractor as might be, for example, an architect hired on a one-time basis to design a village hall.

[6] The Ethics Board has long held with respect to identical provisions applicable to state public officials that an official cannot be in the position both of submitting plans, proposals, or bids in a private capacity, and participating in consideration of approval or rejection of those plans in the capacity of a public official.<sup>1</sup> The code of ethics for local officials equally clearly prohibits a village engineer from taking official action with respect to plans that the engineer has developed for those who have engaged the engineer in a private capacity and for which the engineer has received remuneration.<sup>2</sup> This same stricture applies to reviewing the plans of direct competitors. Moreover, the situation in which an engineer is in a position to facilitate approval of plans the engineer has developed in a private capacity is fraught with the danger that the engineer will receive work because of the

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<sup>1</sup> See, e.g., 10 Op. Eth. Bd. 13 (1988), 9 Op. Eth. Bd. 7 (1986), 5 Op. Eth. Bd. 89 (1982).

<sup>2</sup> See, e.g., 1992 Wis Eth Bd 20.

engineer's status as a public official in clear violation of §19.59(1)(a), *Wisconsin Statutes*.<sup>3</sup>

[7] Section 19.59(1)(c), *Wisconsin Statutes*, also prohibits a village engineer from reviewing plans of any developer for whom the engineer is an authorized representative or agent, even if the plans under review were developed by others. That section prohibits a local official not only from participating officially in a matter in which the official has a private financial interest, but also from participating in a matter in which an organization with which the official is associated has a financial interest. The village engineer in the present matter is associated with a developer of which the engineer "is an authorized representative or agent." §19.42(2), *Wisconsin Statutes*. This would include all developers for whom the engineer presents plans to others for review or approval or on whose behalf the engineer negotiates or appears either publicly or privately.

#### Advice

[8] The Ethics Board advises that a village engineer not act in an official capacity with respect to the review of plans the engineer has prepared in a private capacity or submitted by developers with which the village engineer is associated.

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<sup>3</sup> Section 19.59(1)(a) provides:

No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for . . . private benefit . . . or for an organization with which he or she is associated.